

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE QUEZADA, on behalf of himself and all
others similarly situated,

Plaintiffs,

-against-

ACCRETIVE CAPITAL LLC,

Defendant.

21-CV-1414 (JGLC)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

JESSICA G. L. CLARKE, United States District Judge:

In the Report and Recommendation filed on March 14, 2023, Magistrate Judge Willis recommended that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). *See* Docket No. 8.

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

In the present case, the Report and Recommendation advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections and warned that failure to timely file such objections would result in waiver of any right to object. *See*

Docket No. 8. In addition, the Report and Recommendation expressly called the parties' attention to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Nevertheless, as of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. Accordingly, Plaintiff has waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992).

Despite the waiver, the Court has reviewed the petition and the Report and Recommendation, unguided by objections, and finds the Report and Recommendation to be well reasoned and grounded in fact and law. The balance of factors governing dismissal of an action for lack of prosecution pursuant to Fed. R. Civ. P. 41(b) favors dismissal. *See Balderramo v. Go New York Tours Inc.*, 2019 WL 5682848 at *3 (S.D.N.Y. Nov. 1, 2019). Plaintiff has failed to take any action to advance this case since March 3, 2021, including after the Magistrate Judge ordered Plaintiff to show cause why this action should not be dismissed for failure to prosecute. Plaintiff has had ample opportunity to advance this case and warning as to the consequences of failure to do so. Accordingly, the Report and Recommendation is ADOPTED in its entirety.

The Clerk of Court is directed to close the case.

Dated: July 26, 2023
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Jessica Clarke", is written over a horizontal line.

JESSICA G. L. CLARKE
United States District Judge